

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ROBERT M. GERBER, *et al.*

Plaintiffs,

v.

ROBERT S. BOWDITCH, JR., *et al.*

Defendants.

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CIVIL ACTION NO.
05-10782-DPW

DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 12(b)(2), Defendants, Robert S. Bowditch, Jr., Gerald Slavet, Steven Rioff, and BSR Associates hereby move to dismiss Plaintiffs' Second Amended Complaint.

A memorandum of law in support of this Motion is filed herewith.

WHEREFORE, Defendants respectfully request that this Court enter an Order granting Defendants' Motion, at the Plaintiffs' costs, and for such other and further relief as the Court deems just, fair and proper.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

I hereby certify that my co-counsel, Donald Savery, has conferred with John O'Conner, counsel for the Plaintiffs, and attempted in good faith to resolve the issues herein, and that no resolution was reached.

/s/ Christina N. Davilas
Christina N. Davilas

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), Defendants respectfully request the opportunity to present oral argument on Defendants' Motion To Dismiss Second Amended Complaint.

Respectfully submitted,

**ROBERT S. BOWDITCH, JR.,
GERALD SLAVET,
STEVEN RIOFF, AND
BSR ASSOCIATES,**
By their attorneys,

/s/ Christina N. Davilas

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Donald J. Savery (BBO# 564975)
Christina N. Davilas (BBO# 655477)
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Dated: October 11, 2005

CERTIFICATE OF SERVICE

I, Christina N. Davilas, hereby certify that on this 11th day of October, 2005, I served the foregoing document by causing a true copy of same to be delivered by first-class mail to counsel for the Plaintiffs.

/s/ Christina N. Davilas
Christina N. Davilas